

COMMITTEE ON BILLS ON SECOND READING

February 5, 2007

5:00 PM

Chairman Duval called the meeting to order.

The Clerk called the roll.

Present: Aldermen Duval, Lopez, Gatsas, Garrity, Pinard

Messrs.: Leon LaFreniere, Timothy Soucy

Chairman Duval stated before we start with item number three, or reference to item number three, were there any new communications, Mr. Clerk, relative to the proposal for increasing the fines, any written communication we haven't receive yet?

Deputy City Clerk Matthew Normand responded I didn't receive any, no.

Chairman Duval asked so we are current?

Deputy Clerk Normand stated yes.

Chairman Duval addressed item 3 of the agenda:

3. Ordinance:

“Amending the penalties for certain Code Sections listed in 38.06 Penalties and providing for a penalty for failure to pay within 7 days.”

(Note: communication from the Public Health Director enclosed.)

On motion of Alderman Garrity, duly seconded by Alderman Pinard it was voted to discuss this item.

Chairman Duval stated in an effort to get as much information on this topic before a vote is made, this Committee...I would ask the Committee's indulgence if there were any person here that has views that were in opposition to the increasing of the fines. Is there anybody in the audience tonight?

There was no response from the audience.

Alderman Gatsas stated Mr. Chairman, you know, I look at the increase in the fines and then I look at the letter on the very next page saying that there were somewhere in the vicinity of...investigated 324 litter and trash complaints in addition to these initial inspections. Four hundred seventy-six re-inspections were required. And I look at these and say...and then we get finally down to fourteen offenses that got citations. Does that mean that we've increased the fines so that fourteen citations would be issued? Is that what's going to...Is the increase in fines at the point that it's going to deter citations, or is it...

Chairman Duval asked deter violations?

Alderman Gatsas stated well I'm saying citations because that's what it is. Because the violations...obviously we looked at 476 and then did re-inspections and then...I look at the efficiencies of that and say, okay, what was the time consumption of going back four times to the same place before we gave out a violation?

Chairman Duval stated could I ask Health Director Soucy to come forward and also Building Commissioner LaFreniere come forward as well, please.

Chairman Duval stated thank you, gentlemen. Do you have any questions of these two gentlemen with regard to what's being presented? Alderman Gatsas, I don't know if you have anything to follow up with Mr. Soucy.

Alderman Gatsas stated I'm just looking at the letter that he sent and I would assume there's some sort of documentation from the Building Department, but we haven't received anything that tells us how many times there was a violation and how many re-inspections there were before somebody...and how many citations were sent. I think I asked that question and we were supposed to receive that documentation. I don't think you were here. I believe Mr. Sink was here and I did ask for the same things that we just received from the Health Department to be followed up by the Building Department. But I've not seen them as of yet.

Leon LeFreniere, Building Commissioner, stated I did not understand that the Committee was looking for the information to be submitted in advance. I have prepared information that I believe answers the bulk of those questions. The

challenge that we've faced is that our system has not been structured prior to this current time frame to statistically track the information quite in this fashion. I do have information regarding the number of complaints that we've responded to and the number of citations that have been issued. Our department issued 153 citations for the calendar year '06. Of those 153 there were approximately 104 that were zoning related. Now this does not represent 104 different addresses because multiple citations may have been issued to single addresses. But this is...with regard to the information this Committee is looking for, or has just been stated, our zoning enforcement efforts have been essentially two-pronged, in so far as our zoning inspector has been out actively working on the zoning enforcement for a number of years. In recent history we have enlisted the support of our Housing Standards Division inspectors. The Housing Standards inspectors have responded to approximately 220 complaints in 2006, for which they have cited a number of...or are responsible for a number of those 153 citations that were issued during the course of the year. I'm not sure if that responds exactly to the information you were looking for.

Alderman Gatsas stated when you say 153 citations, is that 153 fines or 153 visits, and how many re-visits?

Mr. LaFreniere stated that was 153 actual tickets that were issued, translating into a fine being levied. Not all those fines have necessarily been paid because once they leave our operation they have to go through a prosecution program, and so not all of those have been adjudicated. However, there have been certainly a number of re-inspections that have taken place as a result of initial complaints, to confirm compliance as well as to issue secondary citations. And that's...our practice is very similar to the Health Department in that when we issue a...we'll go out and make an inspection and issue a notice of correction. And on subsequent re-inspection to determine compliance, that's the point at which we determine if a citation is an appropriate mechanism to seek additional enforcement. And then subsequent non-compliance inspections will result in additional citations.

Alderman Gatsas stated let me get a clear understanding. A hundred and fifty-three. Were those violations or citations that were attached to fines?

Mr. LaFreniere responded citations that were attached to fines.

Alderman Gatsas asked okay, so how many violations did you have before you got to the 153, to see if they were in compliance?

Mr. LaFreniere responded this is the information that we are now trying to extract from the HTE system. It is not information that we had statistically identified in

years past, so in the case of the Housing Standards Division, inclusive of housing violations as well as zoning violations the housing inspectors have responded to, there were approximately 11,954 violations of various codes and ordinances.

Alderman Gatsas stated 11,000.

Mr. LaFreniere stated 11,954 violations and again, multiple violations at a single address. The bulk of those violations were corrected upon a notice of violation being served upon the property owner, and then certainly re-inspections were required in many cases, resulting, at times, in a citation being issued. In other cases citations are not issued because it's not felt that that would be an effective tool to gain compliance. I'm going to give you an example.

Alderman Gatsas stated let's just go through the 11,954. Those were the violations. How many of those required a second visit? Because these are all, I assume, first visits. And I understand their could be multiple violations at one property.

Mr. LaFreniere stated that's information that I'm trying to compile as we speak. I don't have that specifically. But what I wanted to identify for the benefit of the Committee is that in the case of the Housing Standards group, re-inspections carry their own penalty, in so far as re-inspections are charged for on a sliding scale, and the re-inspections go up in cost each time the inspector goes back out. So that's separate from any citation or fine we may issue as a result of a violation.

Alderman Gatsas stated let me ask you the next most obvious question. There's 11,954 violations, of which 153 citations were given out for those close to 12,000 violations. Is that what you're telling me?

Mr. LaFreniere responded yes, because the bulk of those were all cleared upon the first re-inspection.

Alderman Gatsas stated so that's just about one percent.

Alderman Lopez stated on the same line, just walk us through this, because at 11,000 you go out there, and Tim, you sort of...I'm in violation. What do you do?

Mr. LaFreniere responded if you're... we'll go out and do an inspection. Sometimes those inspections are generated as a result of our pro-active efforts with our Certificate of Compliance program or because we have identified something in the field as the inspectors are out doing their work. And sometimes it's the result of a complaint. And the complaint could come in from an Alderman, from a citizen, from the Mayor's office. There are multiple sources for

complaints. We'll go out and make an inspection. We'll determine whether a violation exists or not. That's our first step. Our second step is, once a violation is determined to exist, we'll issue a notice of correction. The property owner is expected to comply. That notice of correction will include a timeframe for compliance. And if it's a light safety kind of issue or if it's something that can be easily and quickly remedied, there'll be ordered to correct it immediately. If it's something that is reasonable to allow more time for correction, we'll issue a period of time to correct. And that period of time is determined by the Department on the basis of the nature of the violation. Once we issue a notice of correction with a commensurate time frame, we will go back out to make sure that the correction has been taken care of. If it has been, if it has been addressed, then that's the end of the process. There are no additional fees or fines or citations issued. If it has not been corrected, that's the point at which we make a determination about whether it's appropriate to issue a citation or it's appropriate to use some other mechanism or means to gain compliance. We find that we are most effective when we can work with a property owner that is willing to cooperate by trying to provide adequate time frames for correction and even in some cases getting an incremental compliance. In other words, if you have more than one violation and you can correct...if you have ten violations and you can correct six of them by a certain date, we'll work with you and give you additional time to correct the other four. Ultimately, if it's determined that the property owner is non-responsive, if there are no other means that are successful to gain compliance, then that's when we will issue a citation. If we issue a citation, that's the point at the process where it really leaves our control. So we don't want to issue a citation as a matter of course unless all of other methods of gaining compliance have really been exhausted.

Alderman Lopez stated once you give the violation, that's the 153 that you're talking about, you work with the other 11,000 people and take care of them?

Mr. LaFreniere stated essentially, but I don't want to leave you with the impression...it's not 11,000 or 12,000 other people. That's separate violations that were found, and multiple violations at single addresses. This report is broken down into everything from the unregistered vehicle in the lot to faulty electrical outlets or whatever, so it's really...there can be multiple...

Alderman Lopez asked isn't your revenue based on the violations coming into the City?

Mr. LaFreniere responded no it is not. Our revenue is based on...revenue is primarily generated as a result of permit fees paid for construction work, as well as Certificate of Compliance fees that are paid as a result of requesting us to go out to inspect property and issue Certificates of Compliance.

Alderman Lopez stated so in the end, in passing some ordinance like this, it's for those people who have desired not to comply with the wishes of either the Health Department or the Building Department, and given the three days or thirty days to clean up, depending on what the situation is. And if I don't clear it up and then I get a ticket, so to speak, a \$200 fine, is there periods of time that you give the first fine before you give the second one, or do you give me more time to clean it up?

Mr. LaFreniere stated we feel it's important to retain that discretion, if you will, with the inspector. But essentially, the way you framed it is accurate. We try to gain compliance through all manner of our enforcement efforts. We issue the citation for those cases where we have an uncooperative property owner, and during this process, when we were reviewing the proposal that was put forward to make a number of adjustments to City Ordinances related to our enforcement efforts, we did feel, and I became convinced as part of those discussions, that increasing the fines would provide additional weight to the citation process when we issue them. So if we issue a citation and it's for this increased amount, we feel it will provide additional weight and potentially be a more effective tool as a result. But when we issue those, because we are dealing with so many different types of circumstances, situations and specific violations, it will vary on the type of time frame that we would feel appropriate to give someone to make a correction. Certainly to get an unregistered vehicle out of a yard should not require a great deal of time. To paint a flaking and peeling house in the winter would require more time to be reasonable in applying our standards. So those are the types of exercises that we go through when we're trying to use discretion in how much time to give between our various citations.

Alderman Lopez stated one more question, follow-up. Have we been able to computerize... 11,000 people are pretty difficult to keep track of mentally, but computerized all the complaints so that we're not losing things in the cracks?

Mr. LaFreniere responded I do not believe we are losing things in the cracks with regard to the types of violations that I've identified because each of these are in the system. They are attached to a specific address. That property is not cleared until each of the specific violations attached to that address have been remedied. So I think that we're in good shape there. What we are spending a considerable effort on at present is trying to identify ways that we can make the computer system, the HTE module that we're using, more effective for providing the type of data that the Committee has been looking for, in a statistical format so I can be in a better position to say, this is how many citations we've issued for this type of violation. And I think it will be an effective tool for us as well to allow us to concentrate on the types of violations that we see more of, the areas where we see more of those types of violations. We can maybe work to providing additional

outreach efforts or information circulation, those types of things that will help us, once we can identify specifically the nature of the violation. So we are working on revamping the system to be able to provide that information on a real time basis.

Alderman Lopez stated okay, just for the public, I know we've talked about it. This is not a revenue generated ordinance that we're trying to approve here. It's more of a compliance aspect of it, and if you have a hundred, you can solve 99 problems and issue one ticket for that stubborn individual that doesn't want to comply with the wishes of the City. Because I've had some calls in reference...that we're trying to generate revenue and I wanted to clear that up. It's not revenue...you don't project in your budget that we're going to take 11,000 and X number of dollars and we're going to make that money, do you? Either one of you?

Mr. LaFreniere stated no, I think we put in \$1,000 as a revenue item, and it goes back to the general fund. And I would be surprised if we meet that.

Chairman Duval stated just an observation. It strikes me that the process, after hearing the explanation of the Commissioner, that the process is thorough and very fair and reasonable. You certainly allow people that are in violation of certain codes to take the time necessary to comply with the ordinance. So it's not as if, and again, for the general viewing public just listening tonight, it's not as if you have inspectors that are running around issuing citations when they see something a little bit askew. In fact, you're working with the owners of these properties to address the situation, and giving them ample time, or a fair and reasonable time frame to comply with the ordinance. That's the way it strikes me, in which case those that are deemed to be deserving of a citation are only getting that citation after a fair period of time. And for whatever reason, their inability or unwillingness to cooperate, finds them in continued non-compliance. So if that's the case, an increase in fines would appear to be fair and reasonable, although, again, I think this whole issue of enforcement is a whole entirely different issue and I think it's important to stress that. Because I think one is not necessarily tied to the other. And we have to continue to strive and make progress on the enforcement end. I think you gentlemen know that. I think I'm very curious and interested, Commissioner, in what you indicated in terms of setting up a new system or revamping your system so we can track this more accurately and this Board and future Boards can properly respond to the cries from our community, which is for increased enforcement, because I think that's what's going to stem the continued growth and escalation of these offenders. Those are just my views.

Mr. Lafreniere stated I think you framed it well in so far as this is not an answer to enforcement issues, but it is one additional tool or an improvement or enhancement to one of our tools that we feel can assist in our efforts.

Chairman Duval stated and as with anything, it's a necessity. It's a necessity, and the question is, What's a fair penalty or fine for those that have been unwilling or unable to respond in a timely manner to address some of these problems.

Alderman Gatsas stated I understand the 12,000 violations could be multiple at a given property. How many times does the inspector go back? He gives the violation. He sends a letter that says, fix it within thirty days. Get rid of the registered car. So he's got to go back to that location to see if the registered car is gone. If the registered car, unregistered car, is not gone, does he send another notice?

Mr. LaFreniere stated depending on the circumstances. Typically, if it's something like an unregistered vehicle and the owner's non-responsive, that's the sort of action that would generate a citation being issued, or a fee or a ticket. If there are multiple violations at an address and the owner has taken steps to correct a reasonable percentage of those and continues to demonstrate a willingness to work toward compliance, then we would probably not issue a citation until such time as it became evident that that was the only effective means of gaining compliance.

Alderman Gatsas stated so he could go to the property a third time.

Mr. LaFreniere stated it's entirely possible, yes.

Alderman Gatsas asked could he go for a fourth?

Mr. LaFreniere responded it's possible, depending on the nature of the situation. Not, as I say...I would want to identify that they typically wouldn't be going back four times for an unregistered vehicle in the yard unless it was to issue multiple citations. But it wouldn't be to just go back and confirm that they still haven't done it so therefore we have to send another letter. That's not the case. But, it may be confirm that some violation either still exists or new ones haven't been created.

Alderman Gatsas stated but I think if you remember, during the budget cycle, I asked you about these code violations and the efficiency that we had within City government to see if we were being efficient with the way we were doing this. And you assured me that it was. And if I start looking and saying that there were 12,000 violations because we never heard that come up during the budget period.

If that's the case, and somebody is going back multiple times, then the process isn't very efficient. Because it's probably costing us more in his time to go back than the citation is worth.

Mr. LaFreniere stated the bulk of those individual violations that I identified have to do with items that are related specifically to building condition, and what is happening is the property owner is being charged for that. If we go out for a first re-inspection and it's free essentially, or is part of the fees that are paid. The second re-inspection is twenty-five dollars. A third re-inspection is thirty-five dollars, and it goes up ten dollars per re-inspection after that. And those are the result of some fee increases that were just passed in October by this Board. So, those are related to fees...the bulk of those issues that you just talked about, you know, going back out to see whether a building problem has been corrected. If it isn't being corrected right away, there's an incentive program in place that is a pretty effective means of getting somebody's attention and getting correction. So I guess what I was trying to respond to is that, yes, there is a mechanism to pay for the inspector's time in the case of those recalcitrant property owners that aren't correcting building problems.

Alderman Pinard stated I'm listening to all this and I've had an experience when I had my little store, not only the landlord. I think we're putting all our...one thing on landlord. Landlord and tenants. I've seen tenants leave Hall Street and go to Belmont Street and wreck the Hall Street apartment and the landlord is stuck with the damages. But then there don't seem to be any way to get to the tenant. So what we're doing here I think is great. Something has to be done because it's not fair. But there also has got to be something in there that a tenant's traceability if they damaged property, and I think we're missing the boat in that sense of the discussion started. So it works both ways and Leon, let me ask you this. You can go to a property a dozen times without doing anything. Is that what you were saying before? I mean you say ten dollars, ten dollars. This can go on for a year or two years. I think that it should be, you know, three times and it's over. Three strikes, you're out.

Mr. LaFreniere stated and certainly if I could provide you with the numbers, and that's what we're working on compiling, that's the case with the bulk of these properties. We issue notices of correction, and somewhere in the vicinity of 85% of these properties, the violations are corrected, just with the notice of violation. And we confirm when we go out for the re-inspection that they are taken care of. Then there's a smaller percentage of these violations and violators are more difficult. But we've had some problem properties over time where we've had to work with property owners, for whatever the circumstances might be, be it limited means or extent of violations or financial or otherwise reasons, and we might have to go back multiple times, but the landlords are being charged for the inspector's

time in those cases. Sometimes what we'll do is we'll find enough violations where the determination is made by the landlord that they want to rehab the building. And as a result, we'll go back and they'll rehab an apartment, and we'll go and clear that apartment, and the violations still are outstanding on the other apartments, but then he moves and rehabs the next apartment. And so, there are reasons why sometimes it takes longer. And it can take longer and still have a cooperative landlord.

Alderman Pinard stated absentee landlords, now we hear that plenty of times when we travel. How do you handle those? Are they the ones that give you a headache, per se? Is there anything in place if you can't locate an absentee landlord? Have you got something in place so you can get a hold of them through communication of some sort?

Mr. LaFreniere stated well sometimes it is a challenge. I wouldn't want to paint a broad brush and say that the nature of the problems that we're having is directly related to absentee landlords. However, when you have an absentee or an out of town or sometimes out of state landlord, it can make communication more difficult, and it can cause the effectiveness of some of our tools to be compromised. And what I mean by that is it's a lot more difficult to issue a citation and serve it to a property owner in California than it is to somebody who lives locally. So that's when we have to make some judgements as to what type of enforcement...how we're going to ultimately seek compliance and what type of enforcement we're going to levy upon a landlord. And I will tell you that we've used multiple means but all with the same goal, which is to get compliance and get a safe property and get a property that's in compliance with the zoning ordinance as well.

Chairman Duval asked Alderman Garrity, do you have any questions? I just don't want to overlook you.

Alderman Gatsas stated between the two of you, do either one of you, or both of you, or neither of you think that this increase in fines is going to be a deterrent? And I guess I ask the question, if a hundred dollars is not going to be a deterrent, then why is two hundred dollars going to be a deterrent?

Tom Soucy, Health Department, stated I believe it's going to be a deterrent for a couple of reasons. Number one, the second part of the provision of this change is that the fine will double in seven days automatically. The second part, about a year ago our procedure for issuing citations changed. Where before we would simply issue a citation, hand it over to ordinance violations and hope it made it through the process, now we've gone to a system of summons, very similar to what the Police Department uses. So if we're going to fine you, we're also giving

you a summons with a court date. That's fourteen days out from the date of issuance. So we almost have an assurance that we're going to get into court for a preliminary hearing within two weeks. Certainly I honestly believe that nobody has any desire to spend their day in District Court for a hearing on a two hundred dollar fine. So, our hope is that this will serve as a deterrent, the fact that it doubles and the fact that when we issue that, you're going to be given a summons and you're going to need to appear in District Court within two weeks if you don't take care of the problem.

Mr. Lafreniere stated and I would add to that that the structure as it's been framed, with the increases proposed allowing for a ramping up, if you will, of the disincentive in pretty rapid form if we issue multiple citations, because the subsequent violations also go up considerably. So I think that the...I believe that the additional fine, if you will, will serve as a disincentive to just ignoring it and not acting on the notice of correction. So I do think it will help.

Mr. Soucy stated and just one follow-up. The sections of Code that we're asking for the increase in fines only deal with garbage, I mean outside of properties. The sections under 91 are Health and Sanitation. That's the section of Ordinance that the Health Department and Highway Department enforce, and the sections of 150 fall under the Housing Code. So we're not looking to increase fines on every violation of Housing Code, of Health Code. Strictly, it's a quality of life issue. It's really those that are not maintaining the exterior of their properties in a clean and sanitary and safe manner. Those are the ones that we want to deliver the message to, that this is unacceptable in Manchester. We will work with you. We will provide you the first notice to gain compliance, which usually works, 85...or 70% in our instance. But if you're not going to do it, there are repercussions to being a property owner in this City if you don't want to care for your property. So once again, just to clarify, these are purely dealing with garbage on the exterior of properties.

Chairman Duval stated and still looking to issue a citation after giving a warning, if you will. I think it's important that people understand.

Mr. Soucy stated correct.

Alderman Lopez stated I think you bring one good point of the garbage, but with the weather we have in New England, I know we've experienced at Henry J. Sweeney Post, that all the garbage comes from the restaurants. Do you ever go to those people who provide that garbage that blows into our yard?

Mr. Soucy stated we do. I should clarify something as well. The complaints that we respond to are consumer driven, if you will. These are complaints that we

receive, for the most part. When we do a restaurant inspection, that's not only part of the City Ordinance pertaining to garbage, but it's part of the Food Code. So we kind of get them on both ends. We cite them on both ends, with double the repercussions, should they not comply. That's also a provision of maintaining their food permit: that the exterior is maintained. So, those are done anywhere from two to four times a year when we do the routine inspection of the restaurant. If it's an issue that we learn about, we'll make a special visit as well.

On motion of Alderman Garrity, duly seconded by Alderman Pinard, it was voted to move the question.

On motion of Alderman Garrity, duly seconded by Alderman Pinard, it was voted to approve, as written, the drafted ordinance.

Chairman Duval stated thank you, gentlemen very much. Very informative.

There being no further business to come before the Committee, on motion of Alderman Pinard, duly seconded by Alderman Garrity, it was voted to adjourn.

A True Record. Attest.

Clerk of Committee